

ASUC Judicial Council

Direct Judgment

LaVoie v. Mecklai Majority Opinion

On this date, the Fourteenth of May, Two Thousand and Thirteen

By Justices Vishaal Pegany and Alexandra Clarke with whom
Chief Justice Suneeta Israni,
Senior Associate Justices Ryan Mattison, and Emrin Dhatt join

I. Background

In the case of *La Voie v. Mecklai*, the Judicial Council was asked to consider alleged violations of ASUC Elections By-Laws by Student Action External Affairs Vice President-elect Safeena Mecklai (Defendant).

The Plaintiff, Anais LaVoie, the party chair for Cal Students for Equal Rights and a Valid Education (CalSERVE), filed five petitions against the Defendant that were all accepted by the Council. Following is a summary of the allegations brought against the Defendant:

- Petition 1: Explicit Disobedience of Residence Hall Staff Directives
 - Alleged violations of ASUC By-Laws, Title IV, Sections 12.3.12 and 12.3.13
- Petition 2: Distribution of Campaign Literature in the Residence Halls
 - Alleged violations of ASUC By-Laws, Title IV, Sections 12.3.11
- Petition 3: Solicitation in the Dining Commons
 - Alleged violations of ASUC By-Laws, Title IV, Sections 12.3.12
- Petition 4: Solicitation in the Dining Commons
 - Alleged violations of ASUC By-Laws, Title IV, Sections 12.3.12
- Petition 5: Soliciting and Campaigning in the Residence Hall
 - Alleged violations of ASUC By-Laws, Title IV, Section 12.3.12

Charges filed in petitions 1, 2, 4, and 5 were dismissed because witnesses or evidence that was proffered in the petitions, witness list, and/or brief could not be produced. Therefore, any evidence or testimony possibly confirming or highly suggestive of a pattern of campaign violations in the Residence Halls that are part of or taken together as a whole from the other petitions filed will not be considered in this decision.

Thus, the Council renders a decision on Petition 3, a case about solicitation in the dining commons, in which the Defendant is alleged to violate ASUC Election Bylaws, Title 4, Article 12, Section 3, Clause 12 (12.3.12):

“Engaging in any campaign solicitation in any dormitory owned by the university or under the jurisdiction of Residential & Family Living.”

II. Introduction of the Arguments

In the Defendant’s brief, the Defendant claims her innocence and describes the allegations made against her by the Plaintiff as a series of “ambiguous claims.” Regarding the allegations in Petition 3, the Defense focuses on the statement made by the Plaintiff’s witness that the Defendant was “not campaigning but definitely soliciting.” The brief argues that the Defendant is absolved of any wrongdoing because she was not engaged in commercial solicitation¹ and that any appearance of solicitation is “merely an artifact of describing the congenial behavior of Ms. Mecklai.”

In the Plaintiff’s brief, the following arguments are made:

1. Ongoing Campaign Presence in Residence and Dining Halls will not end without a clear ruling on this case;
2. The Defendant’s margin of victory in her election can plausibly be enumerated as the number of votes gained through illegal campaigning in Residence and Dining Halls;
3. Cheating is undemocratic; any campaign won by cheating deserves to be fully investigated and prosecuted;
4. Hearsay testimony is valid and admissible in this case.

The Plaintiff seeks the maximum penalty of 3 censures for these campaign violations.

III. Examination of the Arguments

The only admissible evidence and testimony to evaluate the charge enlisted in Petition 3 is the Plaintiff’s witness, Jasmine Verret, a Resident Assistant at Unit 1.

In order to find the Defendant guilty, Judicial Council Rules and Procedures require that three conditions be met: 1) the factual allegation(s) are supported by clear and convincing evidence; 2) the conduct in question violates a stated provision in the ASUC Constitution or By-Laws; and 3) the remedy arrived at is proportionate to the severity of the offense and in full compliance with the ASUC Constitution and By-Laws.

The Council believes the charge brought forth in Petition 3 satisfies the second and third conditions but questioned whether or not the charge being considered satisfied the first condition of “Clear and Convincing Evidence.”

¹ The Defense brief discusses solicitation in the context of the Residential Code of Conduct.

In its considerations, the Council admitted written testimony from the Plaintiff's witness that indicated observing "Safeena Mecklai and Chen-Chen Huo going table-to-table in Café 3, not campaigning, but definitely soliciting" on February 17th, 2013 at or around 12:30-1:00 PM. The Council further admitted oral testimony provided during the hearing by Ms. Verret, who although could not hear what was being discussed, reported seeing the Defendant shaking hands and introducing herself to a table with approximately 10 students. Ms. Verret reported seeing both the Defendant and Mr. Huo sit at this table for some time, but then leave to finish their meals at a separate table. Ms. Verret also indicates she was in the presence of a colleague who informed her that the Defendant was a Student Action candidate for Executive Office in the upcoming ASUC elections. Finally, Ms. Verret states that she has seen the Defendant at Café 3 at other times, but does not recall details about these other instances nor describes them as acts of solicitation. Although it is assumed that Ms. Verret is sincere in describing the February 17th event to the best of her recollection, her testimony alone does not meet the clear and convincing standard. The original written evidence provided by the witness states "going table-to-table," but the oral testimony indicates that only one table was involved. Because there is no other evidence or testimony, and the Defendant exercised her duly granted right to refuse to provide testimony regarding herself, additional revelatory information could not be obtained to explain what may or may not have occurred during the incidence at Café 3. Thus, while it is plausible that the incident at Café 3 may *appear* to be solicitation, substantial missing information and ambiguity surrounding this specific event cannot allow the Council to conclude that this was *indeed* solicitation. Thus, the first condition that evidence must be clear and convincing is not met.

IV. Conclusion and Decision

Because the standard of clear and convincing evidence could not be met, the Council finds the Defendant Not Guilty. It is important to note, however, that if the evidence had met the standard and it had been found that Ms. Mecklai was indeed liable for violating 12.3.12 of Title IV of the ASUC Bylaws, then the charges brought forth today would have been acknowledged as a form of cheating and cheating is - to reiterate what was stated in the Plaintiff's brief - "undemocratic; any campaign won by cheating deserves to be fully investigated and prosecuted." The ASUC External Affairs Vice President (EAVP) is a democratically elected office. As such, the EAVP represents the students of UC Berkeley and must understand that transparent, democratic elections are central to the legitimacy of the office and the ASUC as a whole. As is the case with all ASUC campaigns, candidates must adhere to the procedural and ethical standards set forth by the ASUC Bylaws. Cheating is not tolerated in any capacity at the University of California, Berkeley and consideration and consequences for such infractions will be treated with utmost consideration and severity.

ASUC Judicial Council

Direct Judgment

LaVoie v. Mecklai Dissenting Opinion

On this date, the Fourteenth of May, Two Thousand and Thirteen

By Justices Nicolette Roger and Ahmad Kasfy with whom
Senior Associate Justices Scott Lara joins

In its deliberation, the Majority chose to use a stringent interpretation of evidence by scrutinizing each piece individually rather than an approach, which takes into account the holistic, implicit connections between them. We are convinced that if the latter approach was taken, there was sufficient evidence and testimony to charge the Defendant with at least, but not limited to one censure.

In formulating the dissent, we admitted written testimony and oral testimony provided by Jasmine Verret and an email provided by Ryan Khalessi. In our consideration, we believe that these pieces of evidence helped to establish a pattern of intent that was further corroborated by the Defendant's evidence. It is accredited to these pieces of evidence that we believe the evidence in entirety met the standard of clear and convincing evidence, and thus respectfully disagree with the Majority and believe the Plaintiff.

Because Verret's testimony corresponded to her email testimony and because Verret had no prior relationship with the Defendant, we believe that Verret is a credible witness and does not have a malicious intent. Her court testimony included that she not only witnessed the Defendant introduce herself to a group of ten individuals. Verret also testified that a fellow RA, who is responsible for managing the residence floor of the same ten individuals in question, had complained to her that his residents had been solicited in the dining halls. We believe Ms. Verret's email testimony cites the same date in question and described what she saw there. We believe this email should hold more weight when considering the fact that it was written at a much closer date to the incident than her oral testimony. In the email, she mentioned that the Defendant had campaigned in the dining commons "many times." We believe Ms. Verret's establishes intent to violate a by-law and this same intent has also been referenced to in Ryan Khalessi's testimony described below.

During the trial Mr. Khalessi's personal and friendly relationship with the Defendant was verified and admitted into Court by the Defendant. This amicable relationship as well as the desire for Mr. Khalessi to keep his testimony confidential sufficiently supports his written testimony has no malicious intent toward the Defendant and therefore, was admitted into consideration. Ryan Khalessi's written and signed testimony quoted specific text messages between the Student Action Executive candidate Safeena Mecklai which we believed to show an intent to violate election rules

in the campus facilities. In Mr. Khalessi's letter, he mentions seeing the Student Action candidates campaigning in Unit 3 over twenty times. We believe he implicitly references the entire Student Action Slate to include her. We also believe that Mr. Khalessi references the same incident in the dining commons as to which Ms. Verret testified. Mr. Khalessi also references the exact texts the Defendant provided. Finally, the Defendant Mecklai willfully submitted her text messages, which later corroborated the intent established in previous testimonies provided by Ms. Verret and Mr. Khalessi. Together, Verret's testimony and Khalessi's letter provided clear and compelling evidence against the Defendant.

While intent and action are distinctly separate, we believe the Defendant had a clear intent to intentionally violate known campaign regulations. With this context of intent provided by the Defendant, evidence provided by Khalessi, and testimony provided by Verret, we are properly convinced the evidence points to the Defendant acting on the aforementioned day to violate 12.3.12 of Title IV of the ASUC By-Laws.²

² 12.3.12 of Title IV of the ASUC By-Laws reads, "Engaging in any behavior that may be construed as active campaigning within any dormitory owned by the university or under the jurisdiction of Residential & Family Living. This includes but is not limited to, pressure residents to vote for a certain candidate, part, proposition, initiative, or referendum; walking with a personal device that can be used to vote with the intention of asking students to utilize it for the purposes of voting; and disregarding orders or warnings given by a Residence Hall official, such as a Residential Advisor, Program Advisor, or Residential Director."